

TITLE 327 WATER POLLUTION CONTROL BOARD

#01-51 (WPCB)

**SUMMARY/RESPONSE TO COMMENTS RECEIVED From the Third Comment Period**

The Indiana Department of Environmental Management (IDEM) requested public comment from August 1, 2003, through August 22, 2003, on IDEM's draft rule language. Comments were made by the following parties:

Rae Schnapp, Hoosier Environmental Council	(HEC)
Chad Frahm, Indiana Farm Bureau	(IFB)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* 327 IAC 5-4-3-Concentrated animal feeding operations. A sentence should be added stating that, "a valid individual NPDES permit under this rule or valid general NPDES permit under 327 IAC 15-15 satisfies all requirements of IC 13-18-10 and 327 IAC 16." (IFB)

*Response:* While this specific language was not added in this section, the rule has been revised in a manner to incorporate the design and construction requirements under 327 IAC 16 into the general permit. The rule as revised therefore eliminates the need for an operation to receive and maintain the Confined Feeding Approval provided the operation is covered by the General Permit.

*Comment:* 327 IAC 15-15-3-Applicability. (a) should read, "This rule applies to all CAFOs and all AFOs electing to be subject to this rule located within the boundaries of the state of Indiana." This rule should apply to all AFOs that elect coverage under this rule, not just the ones that are designated as CAFOs. If an AFO is designated as a CAFO under 327 IAC 5-4-3(c) then it is a CAFO. Adding the phrase that the rule applies to AFOs designated as CAFOs is redundant and unnecessary since it is already stated that the rule applies to all CAFOs. (IFB)

*Response:* IDEM agrees that an AFO electing to be subject to the rule would have to comply with the rule requirements. Accordingly, the language has been changed. The original language derives from the federal definitions of AFO and CAFO.

*Comment:* 327 IAC 15-15-4-Construction approval. The construction approval process should be replaced by a process similar to the Rule 13 MS4 Storm Water rule where construction plans are approved through a notice of sufficiency from IDEM. This process should include adequate construction standards identical to the standards in 327 IAC 16 with proper notification to adjoining landowner and neighbors. (IFB)

*Response:* This change has been made and incorporated into 327 IAC 15-15-7.

*Comment:* 327 IAC 15-15-7-Notice of Intent letter requirements. (a) should read, "the owner or operator of a CAFO may submit a notice of intent letter,..." CAFOs are not required to submit a Notice of Intent (NOI) for a general NPDES permit. CAFOs are only required under 327 IAC 5-4-3 to have an NPDES permit. One option in obtaining that permit is through a general NPDES permit. If CAFO does not submit the notice of intent letter in compliance with the general permit, they must apply for an individual permit. (d) should read, "Following submittal of the NOI letter to IDEM, IDEM shall review the NOI for completeness and applicability under this rule." The rest of the paragraph is unnecessary. Particularly, a time frame is not necessary because under a general NPDES permit system the permit is valid upon the agency's receipt of the NOI. If the agency determines the permittee requires an individual permit rather than a general permit, then the agency must notify the permittee of that decision and proceed accordingly, as described in 327 IAC 15-2-9. Under a general NPDES permit system the agency does not decide if the permittee is eligible for a general permit. Only when the permittee is required to obtain a individual permit is a decision made. (g) should be deleted. There is not determination under this section being made. The permittee has appeal rights under 327 IAC 15-2-9(c) if IDEM requires an individual permit. (IFB)

*Response:* The proposed rule has been revised to clarify who is required to submit an NOI, when coverage begins and the process for determining whether an individual NPDES permit is required.

*Comment:* 327 IAC 15-15-8 Notice of Intent submittal deadline; additional information. CAFOs should not be required to submit a general permit NOI. If an operation is a CAFO it is required to obtain an NPDES permit. For certain CAFOs listed in this section, the time frame to obtain an NPDES permit is extended by the federal rule. However, even if the time frame is extended these CAFOs should not be required to submit a general permit NOI. A general permit NOI is one of the options for CAFOs to obtain an NPDES permit. (IFB)

*Response:* See response to previous comment.

*Comment:* This rule should be strengthened to ensure that the larger concentrated animal feeding operations face their obligation to address the concerns of Indiana's rural residents. (HEC)

*Response:* The standards established in the general permit rule meet, or exceed, the federal standards for CAFOs and provide for environmental protection regardless of size.

*Comment:* This rule should specify that new confined feeding operations are required to treat their waste just as municipal wastewater treatment plants do. The cost of this approach compare favorably with the costs of constructing pits, purchasing manure spreading equipment, and transportation of large volumes of manure. Ozone treatment has been demonstrated effective in Indiana. North Carolina is phasing out pits and sprayfields altogether. Indiana should do the same. (HEC)

*Response:* Managed in compliance with the proposed rule land application of manure provides valuable nutrients to the soil without discharging to surface water. It would be beyond the scope of this rule to essentially eliminate such a management option.

*Comment:* Manure pits and sprayfields should be carefully monitored. It is not sufficient to provide them with legal loopholes that allow them to say they are zero discharge while they are polluting our waterways through runoff and field tiles. This rule should require more monitoring and it should enhance citizen's right to know so that the public can assist IDEM in monitoring the performance of these operations. (HEC)

*Response:* 327 IAC 15-15-12(j) has been added to the rule to require monitoring of field tile outlets during and immediately following land application activities.

*Comment:* The rule should require land application of manure to reflect the content of both nitrogen and phosphorous in the manure so that excess nutrients will not contribute to runoff polluting our streams and killing fish. (HEC)

*Response:* The rule has been revised to require new facilities to do land application in accordance with NRCS 590 standards that do take phosphorous into account. Existing facilities have until December 2006 to comply with NRCS standards.

*Comment:* The rule should specify that certain sites, such as those with sinkholes or sensitive geology, are unsuitable for confined feeding operations or land application. Sites known to have high phosphorous levels should also be considered unsuitable. (HEC)

*Response:* The rule incorporates the additional requirements contained in 327 IAC 16 for karst areas in order to consider site specific characteristics and proposed designs to assure they are adequate to protect the environment.

*Comment:* The rule should require monitoring of runoff after manure application, including monitoring of field tiles for nitrogen, phosphorous and E.coli. (HEC)

*Response:* The rule has added a requirement for visual monitoring of field tiles during and after manure application. If manure is identified action must be taken to stop the flow from reaching a surface water.

*Comment:* The rule should prohibit land application on frozen or snow covered ground. (HEC)

*Response:* Land application to frozen or snow covered ground is prohibited unless the facility has developed and implemented a soil conservation practice plan that restricts application to areas with less than 2% slope, the setback distance from a surface water is doubled and the manure is applied at ½ of the agronomic rate.

*Comment:* The rule should prohibit land application of manure on land that is known to flood. (HEC)

*Response:* The rule has been revised to put additional protections for flood plains in place. They include:

- Land application on frozen or snow covered ground in a flood plain is prohibited,
- Additional restrictions have been placed on spray irrigation in a flood plain, and
- Forecast of precipitation events must be taken into account to prevent land application when such an event combined with the soil conditions would likely result in runoff.

*Comment:* The rule should clarify when an operation must obtain an individual permit. (HEC)

*Response:* Language has been added to clarify when an individual permit may be required.

See 327 IAC 15-15-9

*Comment:* The rule should prohibit land application via spray irrigation since irrigation has been the cause of most manure spills. (HEC)

*Response:* The rule does not prohibit such application but the restrictions on such activity which exist in 327 IAC 16 have been incorporated into this rule and additional restrictions on spray irrigation in a flood plain have been added.

*Comment:* The rule should require that operations let citizens know where manure is being land applied so that people can avoid those areas and/or report any problems that are observed. (HEC)

*Response:* A facility does provide information on land available for application of manure in the initial Notice of Intent, or for existing facilities in the CFO approval application. Typically a facility will change which fields are utilized based on a number of factors, including soil type and conditions, proposed crops and agronomic needs. While records must be maintained on-site identifying where application has occurred identification of where application will definitively occur in the future is not required.

*Comment:* The rule should protect ground water by requiring lagoons and pits to be inspected by a certified engineer and tested for leakage before they are put into use. (HEC)

*Response:* Earthen lagoons are required to be designed by a certified engineer and after construction of any manure storage system the applicant must submit an affidavit stating it was constructed in accordance with the rules and approved design. IDEM engineers also inspect lagoons during construction to assure the approved design is being followed.

*Comment:* The rule should provide public notice when a permit renewal comes up so that neighboring farmers and landowner can help IDEM assess whether an operation qualifies for a general permit or an individual permit. (HEC)

*Response:* The rule has been revised to have IDEM do an annual newspaper notice of NOI's submitted during the year for renewal, unless the owner / operator provides documentation that they have provided notice of their NOI submittal for renewal to adjacent land owners. The newspaper notice will be published in each county containing a CAFO submitting a NOI and the rule contains the language that will be placed in the newspaper notice.

12/30/03